

**DISTRICT COURT OF THE VIRGIN ISLANDS**

**DIVISION OF ST. CROIX**

**BENEDETTO A. CERILLI, JR.,**

**Plaintiff,**

**v.**

**CHRISTIANSTED ISLAND HOTELS, LLC,  
DAVID GAYANICH, CHRISTOPHER  
GAYANICH,**

**Defendants.**

**1:17-cv-00019**

**TO: Benedetto A. Cerilli, Jr., *Pro Se*  
Cond Torre de Escorial  
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Carolina, PR 00987  
Bacjr3@gmail.com  
Mark W. Eckard, Esq.**

**REPORT AND RECOMMENDATION**

THIS MATTER is before the Court upon *sua sponte* review.

The record shows that Plaintiff filed his Complaint against Defendants and summonses were issued on or about April 18, 2017. *See* ECF Nos. 1-4. Defendant failed to file returns of service evidencing service of process within the period allowed by the Federal Rules of Civil Procedure, resulting in the undersigned ordering him to show cause why the matter should not be dismissed for failure to prosecute. *See* Order to Show Cause (ECF No. 12), entered January 25, 2018.

Plaintiff responded by requesting the matter not be dismissed and for additional time in which to serve Defendants. *See* Objection to Dismissal and Motion for Extension of

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Time. ECF No. 16. Due to Plaintiff's status as a *pro se* party and upon consideration of the aftermath of Hurricanes Irma and Maria, the undersigned exercised judicial discretion, discharged the order to show cause, and extended the time to serve all Defendants through May 14, 2018. Order (ECF No. 17), entered February 14, 2018.

Thereafter, Plaintiff successfully served Defendant Christiansted Island Hotels, LLC, which filed an answer to Plaintiff's Complaint. *See* Answer of Christiansted Island Hotel, LLC (ECF No. 27). However, in the absence of the filing of any notice of service of process upon the remaining defendants, David Gayanich and Christopher Gayanich, on June 19, 2018, the undersigned entered an Order to Show Cause (ECF No. 28) against Plaintiff to show cause why the matter should not be dismissed as to Defendants Gayanich.

Due to Plaintiff's representations that he was having difficulty locating Defendant David Gayanich, that he was experiencing business and economic setbacks due to natural disasters in Puerto Rico, and that he was attempting to secure legal representation, *see* Objection to Dismissal and Motion for Extension of Time (ECF No. 41) and Response to Order to Show Cause (ECF No. 50), the undersigned again exercised judicial discretion and allowed Plaintiff additional extensions to serve Defendants David Gayanich and Christopher Gayanich.

In the last such order, Plaintiff was granted an extension of time through April 3, 2020, to serve Defendants Gayanich. *See* Order (ECF No. 53), entered August 19, 2020. When no returns of service or other documents indicating that Plaintiff had effectuated service of process upon Defendants David Gayanich and Christopher Gayanich were filed,

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the undersigned issued yet another Order to Show Cause why Plaintiff's claims against those defendants should not be dismissed for failure to prosecute. Order to Show Cause (ECF No. 55), entered October 22, 2020.

The time for Plaintiff's response to the most recent Order to Show Cause having expired on November 20, 2020,<sup>1</sup> and the record remaining void of any response thereto or the filing by Plaintiff of any returns of service of process, the undersigned hereby **RECOMMENDS** that Plaintiff's claims against Defendant David Gayanich and Defendant Christopher Gayanich be **DISMISSED for failure to prosecute**.

Any objections to this Report and Recommendation must be filed in writing within fourteen (14) days of receipt of this notice. 28 U.S.C. § 636(b)(1). Any objections must "specifically identify the portions of the proposed findings, recommendations or report to which objection is made and the basis of such objection." LRCi 72.3. Failure to file objections within the specified time shall bar the aggrieved party from attacking such Report and Recommendation before the assigned District Court Judge. *See, e.g., Thomas v. Arn*, 474 U.S. 140 (1985).

ENTER:

Dated: December 3, 2020

/s/ George W. Cannon, Jr.  
GEORGE W. CANNON, JR.  
U.S. MAGISTRATE JUDGE

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<sup>1</sup> The record indicates that Plaintiff received notice of the Order to Show Cause. *See* Certified Mail return receipt (ECF No. 57), docketed November 6, 2020.